



Update and Tips from the Executive Secretary's Office

**23rd Annual North Carolina Workers'
Compensation Educational Conference
October 10, 2018**

**Meredith R. Henderson, Executive Secretary
Michael R. Kelly, Special Deputy Commissioner
North Carolina Industrial Commission**

EXECUTIVE SECRETARY'S OFFICE

- **Executive Secretary**
- **Special Deputy Commissioners**
 - Lucy Austin
 - Rita Dorry
 - Alexandra Hagerty
 - Mike Kelly
 - Tony Lucas
 - Jessie Price

EXECUTIVE SECRETARY'S OFFICE

- **ESO Staff Members**

- Kimberly Allmond – Medical Motions, 3rd Party distributions, Attorney Withdrawals, Form 23 Applications
- Tiffany Davalos – Form 24 Applications
- Scott Horton – Compromise Settlement Agreements
- Mandy Liang – Compromise Settlement Agreements
- Shona Pearson – General Administrative Motions

EXECUTIVE SECRETARY'S OFFICE

- **FY 2017-18 ESO Statistics**

- 10,049 Orders on Compromise Settlement Agreements
- 3,175 Orders/Dispositions on Administrative Motions
- 2,094 Orders on Medical Motions
- 1,545 Orders/Dispositions on Form 24 Applications
- 666 Orders Distributing Third Party Settlements
- 224 Orders/Dispositions on Form 23 Applications

EXECUTIVE SECRETARY'S OFFICE

- **Information Specialists**

- Vickie Boone
- Cindy Hardy
- Dayana Page
- Maria Bynum

- **Medical Fees Section**

- Bernadine Singh
- Garrett Griffin

- **Nurses Section**

- Beronica Brooks, RN
- Yolanda Newsome

EXECUTIVE SECRETARY'S OFFICE

- **Information Specialists – FY 2017-18**

- Over 17,500 calls answered and returned.
- Over 1,400 letters and emails answered.

- **Medical Fees Section – FY 2017-18**

- Assisted with 462 medical provider fee disputes, resulting in \$65,000 in medical fees being paid to providers.
- Processed 450 medical bills to assist providers and carriers.

- **Nurses Section – FY 2017-18**

- Assisted with medical case management in 107 cases.
- Processed over 12,500 Forms 25N.
- Conducted mandatory training for 259 rehabilitation professionals.

Rules Update: Recodification

- **Recodification of Industrial Commission Rules**

- Effective June 1, 2018, all Industrial Commission rules were moved from Title 04 of the NC Administrative Code to Title 11 due to our transfer to the Department of Insurance.
- For example:
 - Former **04 NCAC 10A .0609A** (Medical Motions rule)
 - is now **11 NCAC 23A .0609A**.
- Only the title and chapter numbers changed from 04 NCAC 10 to 11 NCAC 23. No rule numbers, such as .0609A, changed.
- Check your templates and find and replace rule references!

Rules Update: Revised Rule .0107

- **Rule 11 NCAC 23A .0107, Computation of Time and Notice by the Commission, as amended effective May 1, 2018.**
 - (a) Except as otherwise provided by statute or rule, in computing any period of time prescribed or allowed by the Commission Rules, order of the Commission, or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday established by the State Human Resources Commission pursuant to 25 NCAC 01E .0901 and any subsequent amendments thereto, in which event the period runs until the end of the next State business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. **Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of any document BY MAIL, three days shall be added to the prescribed period.**

Rules Update: Revised Rule .0107

- Rule 11 NCAC 23A .0107, Computation of Time and Notice by the Commission, as amended effective May 1, 2018.
 - What does this change mean?
 - Example:
 - If you are served with a motion to compel by email, you have **10 days** to respond pursuant to 11 NCAC 23A .0609.
 - If you are served with a motion to compel by mail, you have 10 days to respond pursuant to 11 NCAC 23A .0609 **PLUS** 3 additional days to respond pursuant to 11 NCAC 23A .0107, for a total of **13 days**.
 - This rule change is consistent with Rule 6(e) of the North Carolina Rules of Civil Procedures, also known as the “mailbox rule.”

Rules Update: Ambulatory Surgery Center Fees

- **Rule 11 NCAC 23J .0103, Fees for Institutional Services**
 - The fee provisions for ambulatory surgery centers adopted on April 1, 2015, were upheld by the Court of Appeals on Nov. 21, 2017. The Supreme Court denied the petition for discretionary review on April 6, 2018.
 - **The rule adopted on April 1, 2015 is valid and enforceable for dates of service from April 1, 2015 to May 31, 2018.**
 - Effective June 1, 2018, the Commission amended 11 NCAC 23J .0103.
 - **For dates of service on or after June 1, 2018**, ambulatory surgery centers shall be reimbursed at the following rates:
 - 200% of the CMS payment rate for services CMS reimburses when performed at an ambulatory surgery center.
 - 135% of the CMS payment rate for services CMS reimburses when performed in an outpatient hospital.

Rules Update: Opioid Utilization Rules

- **Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management in Workers' Compensation Claims, 11 NCAC 23M .0101-.0501**
 - Effective May 1, 2018.
 - Exception: Requirement to check the CSRS becomes effective November 1, 2018, or on the date of application of S.L. 2017-74, s. 15(e), whichever is earlier.
 - One-stop resource: <http://www.ic.nc.gov/OpioidRulesResourcePage.html>
 - Rules
 - Companion Guide to the Rules
 - One-page table outlining the basics of the rules on opioid prescriptions
 - Suggested forms for use to request information from providers regarding treatment for opioid tapering and substance use disorder.

2018 Rule Making

- **Rule making in progress:**

- “Group 1” rules:

- Amendments to 11 NCAC 23A .0101-.0103, .0108, .0302, .0411, .0503, .0602, .0603, .0608, .0609A-.0611; repeal of .0618.
 - Published in the NC Register on August 15, 2018.
 - Public Hearing held on September 26, 2018.
 - Written comments accepted through October 15, 2018.

- “Group 2” rules:

- Amendments to 11 NCAC 23A .0501, .0502, .0604, .0609, .0617, .0619, .0701, .0702, .0801; adoption of .0109, .0620.
 - Published in the NC Register on September 17, 2018.
 - Public Hearing to be held on October 31, 2018.
 - Written comments accepted through November 16, 2018.

- Send written comments to: Ashley.Snyder@ic.nc.gov

Proposed Changes to Rule .0502

- **11 NCAC 23A .0502, Compromise Settlement Agreements**
- **Proposed changes that could be effective 1/1/19 if adopted by the Commission and approved through formal rulemaking:**
 - Requirement to include information regarding payment of the costs for Commission review of the CSA and any mediation costs.
 - Revision of language regarding requirements when plaintiff has not returned to work at the same or greater average weekly wage.
 - Additional details regarding the required list of all medical expenses.
 - Requirement that plaintiff's counsel advise the Commission if aware of a fee petition pending from a prior attorney and whether an agreement regarding a fee split has been reached.

Proposed Changes to Rule .0609

- 11 NCAC 23A .0609, Motions Practice in Contested Cases
- **Proposed changes that could be effective 1/1/19 if adopted by the Commission and approved through formal rulemaking:**
 - Motions for attorney's fees from ongoing compensation shall be filed with the Claims Administration Section.
 - Requests for extension of time and requests to withdraw motions must comply with Rule .0609.
 - Moving parties must state the opposing party's position or indicate that there was a reasonable attempt to contact the opposing party for its position prior to filing the motion.
 - Parties in agreement may submit a stipulation for an extension of time to respond to a motion of up to 30 days.
 - Additional details about information that must be included in a proposed Order.

Practice Tips for Administrative Motions

- Motions to compel discovery alleging incomplete response should include the opposing party's response and an explanation of why the response is insufficient. Rule 11 NCAC 23A .0609(e).
- If you file a motion to compel discovery and the opposing party provides discovery responses, any alleged deficiencies in the responses should be the subject of a new motion. Rule 11 NCAC 23A .0605(9).
- Motions to dismiss or add a party must be served on all parties/counsel. Rule 11 NCAC 23A .0609(e).
- Requests for distribution of third-party settlement funds should include documentation for each sum to be distributed. I.e., release, attorney fee contract, list of litigation costs, etc. N.C.G.S. § 97-10.2(f).
- Motions to remove a rehabilitation professional must be served on the rehabilitation professional. Rule 11 NCAC 23C .0110.

Practice Tips for Compromise Settlement Agreements

- Update agreement and order templates to reflect new rule numbers.
- If a claim is denied, include the reason for denial in the CSA. N.C.G.S. 97-17(c) requires the Commission to consider whether the claim was reasonably denied.
- Clearly outline the basis for any agreed upon credit in the CSA.
- If there is a child support lien, include documentation of the arrearage.
- Include any medical cost projection used to determine an MSA amount.
- If an MSA is to be structured in an annuity, include the annuity documents.
- If an MSA is to be administered by a professional administrator, include all related paperwork and information.